

By: Callegari

H.B. No. 3243

A BILL TO BE ENTITLED

1 AN ACT

2 relating to notice of and consent to an abortion for a minor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. The heading to Chapter 33, Family Code, is
5 amended to read as follows:

6 CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

7 SECTION 2. Chapter 33, Family Code, is amended by adding
8 Section 33.0021 to read as follows:

9 Sec. 33.0021. CONSENT REQUIRED. A physician may not
10 perform an abortion in violation of Section 164.052(a)(19),
11 Occupations Code.

12 SECTION 3. Section 33.003, Family Code, is amended by
13 amending Subsections (a), (b), (c), (e), (g), (h), (i), (j), and (k)
14 and adding Subsections (i-1), (i-2), (i-3), (l-1), and (l-2) to
15 read as follows:

16 (a) A pregnant minor who wishes to have an abortion without
17 notification to and consent ~~[one]~~ of a parent ~~[her parents]~~, ~~[her]~~
18 managing conservator, or ~~[her]~~ guardian may file an application for
19 a court order authorizing the minor to consent to the performance of
20 an abortion without notification to and consent of a parent,
21 ~~[either of her parents or a]~~ managing conservator, or guardian.

22 (b) The application may be filed in any county court at law,
23 court having probate jurisdiction, or district court, including a
24 family district court, in the minor's county of residence or in a

1 neighboring county if the minor's county of residence has a
2 population of less than 10,000 [~~this state~~].

3 (c) The application must be made under oath and include:

4 (1) a statement that the minor is pregnant;

5 (2) a statement that the minor is unmarried, is under
6 18 years of age, and has not had her disabilities removed under
7 Chapter 31;

8 (3) a statement that the minor wishes to have an
9 abortion without the notification to or consent of a parent,
10 [~~either of her parents or a~~] managing conservator, or guardian; and

11 (4) a statement as to whether the minor has retained an
12 attorney and, if she has retained an attorney, the name, address,
13 and telephone number of her attorney.

14 (e) The court shall appoint a guardian ad litem for the
15 minor who shall represent the best interest of the minor and presume
16 that involving a parent, managing conservator, or guardian in the
17 minor's abortion decision is in the best interest of the minor. If
18 the minor has not retained an attorney, the court shall appoint an
19 attorney to represent the minor. The [~~If the~~] guardian ad litem may
20 not also [~~is an attorney admitted to the practice of law in this~~
21 ~~state, the court may appoint the guardian ad litem to~~] serve as the
22 minor's attorney.

23 (g) The court shall fix a time for a hearing on an
24 application filed under Subsection (a) and shall keep a record of
25 all testimony and other oral proceedings in the action. [~~The court~~
26 ~~shall enter judgment on the application immediately after the~~
27 ~~hearing is concluded.~~]

1 (h) The court shall rule on an application submitted under
2 this section and shall issue written findings of fact and
3 conclusions of law not later than 5 p.m. on the fifth [~~second~~]
4 business day after the date the application is filed with the court.
5 On request by the minor, the court shall grant an extension of the
6 period specified by this subsection. If a request for an extension
7 is made, the court shall rule on an application and shall issue
8 written findings of fact and conclusions of law not later than 5
9 p.m. on the fifth [~~second~~] business day after the date the minor
10 states she is ready to proceed to hearing. If the court fails to
11 rule on the application and issue written findings of fact and
12 conclusions of law within the period specified by this subsection,
13 the application is deemed to be granted, and the court clerk shall
14 issue to the physician a certificate showing that the court failed
15 to rule on the application. Upon receipt of the certificate, the
16 physician may perform the abortion as if the court had issued an
17 order authorizing the minor to consent to the performance of the
18 abortion without the notification under Section 33.002 and consent
19 under Section 33.0021. Proceedings under this section shall be
20 given precedence over other pending matters to the extent necessary
21 to assure that the court reaches a decision promptly, regardless of
22 whether the minor is granted an extension under this subsection.

23 (i) The court shall determine by clear and convincing [~~a~~
24 ~~preponderance of the~~] evidence, as described by Section 101.007,
25 whether the minor has overcome the presumption that notifying and
26 requesting consent from a parent, managing conservator, or guardian
27 is in the minor's best interest. In making a determination under

1 this subsection, the court shall consider:

2 (1) whether the minor is mature and sufficiently well
3 informed to make the decision to have an abortion performed without
4 notification to or consent of a parent, [~~either of her parents or a~~]
5 managing conservator, or guardian;

6 (2) [✓] whether the abortion [~~notification~~] would
7 [~~not~~] be in the best interest of the minor; and

8 (3) [✓, or] whether notification or the attempt to
9 obtain consent may lead to physical, sexual, or emotional abuse of
10 the minor, as described by Section 261.001.

11 (i-1) In determining whether the minor meets the
12 requirements of Subsection (i)(1), the court shall consider the
13 experience, perspective, and judgment of the minor. The court may
14 consider all relevant factors, including:

15 (1) the minor's age;

16 (2) the minor's life experiences, such as working,
17 traveling independently, or managing her own financial affairs;

18 (3) steps taken by the minor to explore her options and
19 the consequences of those options; and

20 (4) the minor's decision not to notify and obtain
21 consent from a parent, managing conservator, or guardian.

22 (i-2) In determining whether the abortion is in the best
23 interest of the minor, the court may:

24 (1) inquire as to the minor's reasons for seeking an
25 abortion;

26 (2) consider the degree to which the minor is informed
27 about the state-published informational materials described by

1 Chapter 171, Health and Safety Code; and

2 (3) require the minor to be evaluated by a licensed
3 mental health counselor, who shall return the evaluation to the
4 court for review within three business days.

5 (i-3) If the court finds that the minor is mature and
6 sufficiently well informed, that the abortion [~~notification~~] would
7 [~~not~~] be in the minor's best interest, or that notification or the
8 attempt to obtain consent may lead to physical, sexual, or
9 emotional abuse of the minor, the court shall enter an order
10 authorizing the minor to consent to the performance of the abortion
11 without notification to or consent of a parent, [~~either of her~~
12 ~~parents or a~~] managing conservator, or guardian and shall execute
13 the required forms.

14 (j) If the court finds that the minor does not meet the
15 requirements of Subsection (i-3) [~~(i)~~], the court may not authorize
16 the minor to consent to an abortion without the notification
17 authorized under Section 33.002(a)(1) and consent under Section
18 33.0021.

19 (k) The court may not notify a parent, managing conservator,
20 or guardian that the minor is pregnant or that the minor wants to
21 have an abortion. The court proceedings shall be conducted in a
22 manner that protects the anonymity of the minor. The application
23 and all other court documents pertaining to the proceedings are
24 confidential and privileged and are not subject to disclosure under
25 Chapter 552, Government Code, or to discovery, subpoena, or other
26 legal process. The minor may file the application using a pseudonym
27 or using only her initials. Confidential records pertaining to a

1 minor under this subsection may be disclosed to the minor.

2 (1-1) The clerk of the court, at intervals prescribed by the
3 Office of Court Administration of the Texas Judicial System, shall
4 submit a report to the office that includes, for each case filed
5 under this section:

6 (1) the case number and style;

7 (2) the applicant's county of residence;

8 (3) the court in which the proceeding occurred;

9 (4) the date of filing;

10 (5) the date of disposition; and

11 (6) the disposition of the case.

12 (1-2) The Office of Court Administration of the Texas
13 Judicial System shall annually compile and publish a report
14 aggregating the data received under Subsections (1-1)(2), (3), and
15 (6). A report under this subsection must protect the anonymity of
16 all minors that are the subject of the report.

17 SECTION 4. Section 33.004(b), Family Code, is amended to
18 read as follows:

19 (b) The court of appeals shall rule on an appeal under this
20 section not later than 5 p.m. on the fifth [~~second~~] business day
21 after the date the notice of appeal is filed with the court that
22 denied the application. On request by the minor, the court shall
23 grant an extension of the period specified by this subsection. If a
24 request for an extension is made, the court shall rule on the appeal
25 not later than 5 p.m. on the fifth [~~second~~] business day after the
26 date the minor states she is ready to proceed. If the court of
27 appeals fails to rule on the appeal within the period specified by

1 this subsection, the appeal is deemed to be granted and the court
2 clerk shall issue to the physician a certificate showing that the
3 court failed to rule on the application. On receipt of the
4 certificate, the physician may perform the abortion as if the court
5 had issued an order authorizing the minor to consent to the
6 performance of the abortion without the notification under Section
7 33.002 and consent under Section 33.0021. Proceedings under this
8 section shall be given precedence over other pending matters to the
9 extent necessary to assure that the court reaches a decision
10 promptly, regardless of whether the minor is granted an extension
11 under this subsection.

12 SECTION 5. Section 33.008, Family Code, is amended to read
13 as follows:

14 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
15 INVESTIGATION [~~AND ASSISTANCE~~]. (a) A physician who has reason to
16 believe that a minor has been or may be physically or sexually
17 abused [~~by a person responsible for the minor's care, custody, or~~
18 ~~welfare, as that term is defined by Section 261.001,~~] shall
19 immediately report the suspected abuse to the Department of Family
20 and Protective Services and shall refer the minor to the department
21 for services or intervention that may be in the best interest of the
22 minor.

23 (b) The Department of Family and Protective Services shall
24 investigate suspected abuse reported under this section [~~and, if~~
25 ~~appropriate, shall assist the minor in making an application with a~~
26 ~~court under Section 33.003~~].

27 SECTION 6. (a) Sections 33.003 and 33.004, Family Code, as

1 amended by this Act, apply only to a petition filed on or after the
2 effective date of this Act. A petition filed before the effective
3 date of this Act is governed by the law in effect on the date the
4 petition was filed, and the former law is continued in effect for
5 that purpose.

6 (b) The Office of Court Administration of the Texas Judicial
7 System is not required to publish the initial report under Section
8 33.003(1-2), Family Code, as added by this Act, before January 1,
9 2015.

10 SECTION 7. This Act takes effect January 1, 2014.